(2)

Office - Supreme Court, U. S.
APR 6 1943
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 818.

ANNA S. A. GRAF and AUGUST GRAF, individually, and said AUGUST GRAF, as Executor of the Estate of George C. Shipman, Deceased, RUTH MARSH, DORIS MARSH, BLANCHE BELLOWS, AMY WILLIAMS KING, T. WRIGHT WILLIAMS and ADELAIDE S. WILLIAMS,

Petitioners,

vs.

CITY OF NEWARK,

Respondent.

BRIEF OF RESPONDENT IN OBJECTION TO GRANTING A WRIT OF CERTIORARI TO THE NEW JERSEY COURT OF ERRORS AND APPEALS.

RAYMOND SCHROEDER,
Attorney for Respondent,
City Hall,
Newark, N. J.

PHILIP J. SCHOTLAND,
Of Counsel,
Newark, N. J.

Arthur W. Cross, Inc., Law Printers, 71-73 Clinton Street, Newark, N. J.

INDEX.

PAGE

RESPONDENT'S VERSION OF THE FACTUAL SITUATION INVOLVED 1

SUMMARY OF ARGUMENT 3

ARGUMENT.

Point I. The provisions of Title 28, Section 344 U. S. C. A. (Section 237 as amended) afford no authority for review by this Court of the proceedings had in the State Courts of New Jersey on a purely local matter 4

Point II. The decision of the highest Court of a State involving nothing more than the ownership of property with all the parties in interest represented, cannot be regarded by the unsuccessful party, as a deprivation of any constitutional rights 7

Point III. The record of the case before the Supreme Court and Court of Errors and Appeals of the State of New Jersey shows that the issue involved is a purely local matter, viz., the title to real estate located in the State of New Jersey, the determination of which rests purely on the laws of New Jersey, and no Federal Statute or Treaty or Federal question being involved, this Court does not take jurisdiction either by certiorari or appeal 9

CONCLUSION 11

APPENDIX A 12

Cases Cited.

	PAGE
Caperton vs. *Ballard*, 14 Wall. 238, 241, 20 L. Ed. 885	5
Doe Ex Dem. Farmer's Heirs vs. *Eslava, et al.*, 9 Howard 421	8
Erie Railroad Company vs. *Tompkins*, 304 U. S. 64, 82 L. Ed. 1188	11
Grand Gulf Railroad and Banking Company, et al. vs. John R. Marshall, 12 Howard 165	5
Heck vs. *Nicholas, et al.*, 6 Fed. 2nd 10	7
Hooker vs. *Los Angeles*, 188 U. S. 314, 47 L. Ed. 487	8
Nobel vs. *Oklahoma City*, 297 U. S. 481, 80 L. Ed. 816	6
O'Connor vs. *State of Texas*, 202 U. S. 501, 50 L. Ed. 1120	6
Tracy vs. *Ginzberg*, 205 U. S. 170, 51 L. Ed. 755	7
U. S. C. A. 28, Section 344	4, 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 818.

ANNA S. A. GRAF and AUGUST GRAF, individually, and said AUGUST GRAF, as Executor of the Estate of George C. Shipman, Deceased, RUTH MARSH, DORIS MARSH, BLANCHE BELLOWS, AMY WILLIAMS KING, T. WRIGHT WILLIAMS and ADELAIDE S. WILLIAMS,

Petitioners,

vs.

CITY OF NEWARK,

Respondent.

RESPONDENT'S VERSION OF THE FACTUAL SITUATION INVOLVED.

This case arises from a claim by the petitioners that as heirs at law of their ancestor they are entitled to the reversion in certain lands located in the City of Newark, New Jersey. The lands in question were conveyed by the ancestor of the petitioners by deed dated January 9th, 1830, to the Morris Canal and Banking Company, their successors and assigns.

The habendum clause of the deed is as follows:

> "To have and to hold the said land and premises to the said The Morris Canal and Banking Company, their successors and assigns, so long as the same shall be used for the purpose for which the Morris Canal and Banking Company have power to use the same by the true intent and meaning of the said act" (R. 55 and 56).

The petitioners commenced their action in the Supreme Court of New Jersey, the case was duly tried, all the parties involved were before the Court and the Supreme Court, in construing the habendum clause in connection with the Laws of the State of New Jersey and the State Statutes involved, deemed that no reversionary rights had arisen in favor of the petitioners. (Opinion of Supreme Court of New Jersey R. 7, reported in 124 N. J. Law 312.)

The only issue was and is a question of title to real estate in New Jersey, which question was duly adjudicated by the Courts of the State of New Jersey. The only theory upon which the petitioners seek this Writ is in effect that because the Supreme Court of New Jersey decided and the Court of Errors and Appeals of New Jersey affirmed said decision, that the petitioners had no property rights, they are thereby deprived of their property without just compensation, evidently because they do not agree with the decision of the Court and still think they are entitled to the property.

Based upon this line of thinking and assumption on the part of petitioners, they have stated their grounds changing the verbiage but always claiming the same thing, that they are thereby the victims of a violation of the Constitution of the United States and of the Constitution of the State of New Jersey in being deprived of their property

without just compensation, without due processes of law, and that their constitutional rights are impaired and the natural right to have and acquire property is interfered with.

The legal situation as it appears to respondent, is dealt with in the following three points:

SUMMARY OF ARGUMENT.

POINT I.

The provisions of Title 28, Section 344 U. S. C. A. (Section 237 as amended) afford no authority for review by this Court of the proceedings had in the State Courts of New Jersey on a purely local matter.

POINT II.

The decision of the highest Court of a State involving nothing more than the ownership of property with all the parties in interest represented, cannot be regarded by the unsuccessful party, as a deprivation of any constitutional rights.

POINT III.

The record of the case before the Supreme Court and Court of Errors and Appeals of the State of New Jersey shows that the issue involved is a purely local matter, viz., the title to real estate located in the State of New Jersey, the determination of which rests purely on the laws of New Jersey, and no Federal Statute or Treaty or Federal question being involved, this Court does not take jurisdiction either by certiorari or appeal.

ARGUMENT.

POINT I.

The provisions of Title 28, Section 344 U. S. C. A. (Section 237 as amended) afford no authority for review by this Court of the proceedings had in the State Courts of New Jersey on a purely local matter.

Petitioners rely in their Brief upon U. S. C. A. 28, Section 344, as the basis for the assumption of jurisdiction by this Court, and the issuance of a Writ of Ceritorari.

We desire to call the Court's attention to the fact that by the provisions of this Section (a full copy of which is printed in Appendix A of this Brief) a Writ of Certiorari may be issued to review a final judgment or decree in any suit in the highest Court of a State in which a decision in the suit could be had, where there is drawn in question the validity of a Treaty or Statute of the United States and the decision is against its validity.

In the instant case there is no question involving either the validity of a Treaty or of a Statute of the United States. This Section also permits Certiorari where there is drawn in question the validity of a Statute of any State on the ground of its being repugnant to the Constitution, Treaties or Laws of the United States.

In the instant case there is no Statute of the State of New Jersey drawn into question on either or any of those grounds.

The same grounds by Section 237 as amended of the Judicial Code, may be used as grounds for appeal to this

Court, but as pointed out above, none of them are involved in the instant case.

The additional grounds mentioned in Paragraph (b) of said Section 237 of the Judicial Code, which are:

> "* * * Where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties or laws of the United States; or where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States:"

is of no help to the petitioners because no such questions are involved in the instant case.

In the case of *Caperton* vs. *Ballard,* 14 Wall. 238, 241, 20 L. Ed. 885, this Court said, referring to the same Section, now 237 of the Judicial Code as amended:

> "This Court has repeatedly declared that it is only under the 25th Section of the Judiciary Act (now 237) that it takes cognizance of error committed in the highest Courts of the State. There must be a Federal question, within the terms of that Section, to enable us to review the decision of a State tribunal."

In *Grand Gulf Railroad and Banking Company, et al.* vs. *John R. Marshall,* 12 Howard 165, this Court held that where it appears from the record that the decision of the State Court turned upon the construction and not the validity of a State Law, and that the question of its validity was not raised, this Court has no jurisdiction.

In *O'Connor* vs. *State of Texas,* 202 U. S. 501, 50 L. Ed. 1120, this Court held that the defense to an action by a state to recover possession of a tract of land, so far as based upon a Spanish grant, involves no question of a Federal nature which can be considered in the Supreme Court of the United States on writ of error to a state Court, where neither the validity nor construction of any treaty of the United States nor the validity of the grant were challenged.

The petitioners in their Brief rely strongly upon the case of *Nobel* vs. *Oklahoma City,* 297 U. S. 481, 80 L. Ed. 816, in support of their contention not only that this Court ought to review the decision of the New Jersey Court, but also as to the correctness of the New Jersey Court decision. An examination of this case shows that this Court took jurisdiction because it was a case in which the Supreme Court of Oklahoma decided the question of title involved based upon its construction of Acts of Congress and grants by the President of the United States, and although this Court found that the Supreme Court of Oklahoma was in error in its construction and interpretation of the effect of the Acts of Congress and reversed the judgment, it expressly says in the opinion, at page 495 of U. S. Rep.:

> "We express no opinion as to the effect of the habendum clause since this is a question of State Law and appropriately may be decided by the State Court."

POINT II.

The decision of the highest Court of a State involving nothing more than the ownership of property with all the parties in interest represented, cannot be regarded by the unsuccessful party, as a deprivation of any constitutional rights.

In *Heck* vs. *Nicholas, et al.*, 6 Fed. 2nd 10, the Circuit Court of Appeals for the 8th Circuit held at page 11:

> "The sovereignty of a State is supreme over real property situated within its boundaries, and it may establish rules of law and procedure for the transfer and settlement of titles to real property without violating the Federal Constitution, provided the property in question is brought under control of its Court, and a reasonable opportunity to be heard is given to all interested parties by actual or constructive notice, depending upon the circumstances of the case."

In the instant case the record presented by the petitioners clearly shows that the question involved was the title to real property in the State of New Jersey, that all interested parties not only were given an opportunity to be heard, but were actually in Court, represented by Counsel, and submitted their contentions which were passed upon by the Supreme Court of New Jersey whose decision was affirmed by the Court of Errors and Appeals.

In *Tracy* vs. *Ginzberg*, 205 U. S. 170, 51 L. Ed. 755, this Court says on page 178:

> "The Court proceeding entirely upon principles of general and local law and giving all parties in-

> terested in the question an opportunity to be heard, decided that plaintiff had no right to that money. The decision of a State Court, involving nothing more than the ownership of property, with all parties in interest before it, cannot be regarded by the unsuccessful party as a deprivation of property without due process of law, simply because its effect is to deny his claim to own such property. If we were of opinion, upon this record, that the money received by Ginzberg from O'Hearn really belonged to Tracy—upon which question we express no opinion—still it could not be affirmed that the latter had, within the meaning of the Constitution, and by reason of the judgment below, been deprived of his property without due process of law. Under the opposite view every judgment of a State Court involving merely the ownership of property could be brought here for review—a result not to be thought of."

In *Hooker* vs. *Los Angeles,* 188 U. S. 314, 47 L. Ed. 487, this Court held at page 317 of U. S. Rep.:

> "Obviously, the question as to the title or right of plaintiffs in error in the land, and whatever appertained thereto, was one of State Law and of General Public Law, on which the decision of the State Court was final."

In *Doe Ex Dem. Farmer's Heirs* vs. *Eslava, et al.,* 9 Howard 421, an ejectment suit, both parties claiming title to the land in controversy, which was situated in the State of Alabama, this Court on page 444 held:

> "The principles of law applicable to these possessions, as existing in Alabama, and as to land held under ancient French and Spanish permits and

grants, we do not propose to consider; nor to revise the correctness of the rulings of the State Courts concerning them, because they are matters clearly within their sole jurisdiction."

Respondents respectfully submit that the cases above cited and quoted from, are dispositive of the issues pending before this Court upon the present application, and that, therefore, the application for a Writ of Certiorari should be denied.

POINT III.

The record of the case before the Supreme Court and Court of Errors and Appeals of the State of New Jersey shows that the issue involved is a purely local matter, viz., the title to real estate located in the State of New Jersey, the determination of which rests purely on the laws of New Jersey, and no Federal Statute or Treaty or Federal question being involved, this Court does not take jurisdiction either by certiorari or appeal.

It is obvious from a reading of the record that the questions raised by the petitioners in the Courts of New Jersey are of a purely local nature involving no Federal right.

An examination of the Stipulation and Statement of Facts (R. pp. 54 to 62, inclusive) upon which it was agreed that the determination of the Supreme Court of the State of New Jersey on the petitioners' application for a Writ of *Mandamus* should be founded, boldly indicates

(a) That the ancestors of the petitioners conveyed the land in question in 1830 to the Morris Canal and

Banking Company by deed, the habendum clause of which is quoted in full on page 1 of this Brief and therefore not here repeated; and

(b) The petitioners submitted the question of their legal rights under said habendum clause for determination by the Supreme Court of New Jersey in said Stipulation in the following statement appearing on R. 62:

> "1. That the parties do submit to the determination of the Court the following question: Has title to the premises in question reverted to the heirs at law and successors in interest of Charles T. Shipman?
>
> "2. If the Court shall be of the opinion that the premises in question have reverted to the heirs at law and successors in interest of the said Charles T. Shipman, that the Court issue such Writ or make such order in the premises as the facts in the case and the determination of the Court may, in its judgment, warrant."

We turn now to a brief discussion of the opinion of Mr. Justice Porter, of the New Jersey Supreme Court, which clearly demonstrates that this controversy evolved around the interpretation of the language of the deed of 1830 from the petitioners' ancestors concerning property located in New Jersey and the construction and effect thereon, if any, of Statutes of New Jersey (R. pp. 7 to 10, inclusive). The New Jersey Court deemed that:

(a) There has been no change in the use of the land as a public highway.

(b) That there is no reversion.

(c) That the Respondent as successor in title to the Morris Canal and Banking Company acquired a good and valid title from the State of New Jersey.

A reading and consideration of the Stipulation and Statement of Facts and the foregoing opinion of the Supreme Court of New Jersey clearly demonstrates that there is not the slightest inference or suggestion of any claim that even remotely might be a Federal right.

Both the agreed upon facts for the New Jersey Court's determination and the elements upon which its opinion is based deal solely with purely local matters, and the affirmance of the decision of the New Jersey Supreme Court by the Court of Errors and Appeals settles the Law of New Jersey as applied to the facts of the instant case. In this situation the judgment of the New Jersey Court of Errors and Appeals is final, and its decision must be followed by this Court.

Erie Railroad Company vs. *Tompkins,* 304 U. S. 64, 82 L. Ed. 1188.

In conclusion, the respondent respectfully submits that the application for a Writ of Certiorari should be denied.

Respectfully submitted,

RAYMOND SCHROEDER,
Attorney for Respondent.

PHILIP J. SCHOTLAND,
Of Counsel.